POOLING AGREEMENTS

By W. G. Sickel,

Vice-Director, Hamburg-American Line, New York.

Pooling, as the term is used in the steamship business, is the payment of some part of the freight or passage money into a fund to be subsequently divided in certain agreed proportions among partners. The object of all such arrangements is to regulate competition in the interest of both shipper and shipowner.

Moreover, pooling is an evolution of the shipping business, and the conditions out of which it grew, which were those arising just subsequent to the displacement of sail by steam, can best be expressed by quoting the language of the Royal Commission on Shipping Rings, an English body appointed in 1907 to make a report on the so-called shipping rings as they existed in England. This commission reported:

In early sailing-ship days there was little variety in the methods by which goods were shipped overseas. A ship, whether it was chartered to carry cargo in bulk or to take general merchandise for a large number of shippers, would usually receive its cargo at one port and would not sail until its cargo spaces were more or less full. The date of sailing was therefore a matter of uncertainty. The date on which the vessel would arrive was even more uncertain. In the case of a vessel bound, say, to the Far East, it was impossible to predict with any degree of certainty when the cargo would be delivered. The merchant had to ship his goods in speculative anticipation of the requirements of his market, and, as the number of shipping opportunities was limited, he was in the habit of shipping large quantities at a time.

All this was changed by the substitution of steam for sail, more especially after the introduction of the compound engine. As the length of time which a steamer would take between two points could be estimated with precision, the merchant who knew that there would be a favorable market for his goods at a particular season of the year could so arrange his shipments that they would arrive at the right time. Moreover the increase of postal facilities and the laying of cables enabled him to obtain from his agents abroad the latest intelligence as to the markets in foreign countries. Or, if he was an agent acting for merchants abroad, he could receive from them and execute definite orders. One effect then of the replacement of sail by steam was the gradual elimination of one of the speculative elements in a merchant's busi-

ness, and the substitution of a system under which goods were despatched overseas in almost exact correspondence with the requirements of the market abroad.

Another effect of the substitution of steam may be noticed. The steamship lends itself to greater variation than the sailing ship. It can be more nearly adapted to the requirements of particular trades and particular commodities. And, as steamships vary in their class and speed, so also commodities vary in the methods of transportation which are suitable to them. For many cargoes, more especially those shipped in bulk, which do not require rapid transportation or a regular service, and those for which the demand is constant all the year round, the methods of sailing-ship days, reinforced by the speed of the steamer, sufficed. In this way was developed the tramp steamer, which, like the sailing ship, need not sail until its holds are full, and usually receives the whole of its cargo at one port for discharge at one port.

For another class of cargo, viz., general merchandise, the introduction of the steamship opened up greater possibilities. The variety of these goods is great, the orders for them are small and fluctuating, and they are shipped not to one consignee but to many. They are in many cases goods of high value on which the loss of interest over a long voyage is considerable. For commodities of this character the advantages of a regular service of high class steamers became so great that it was regarded by the majority of merchants as practically essential and in response as it were to the requirements of trade, shipping companies began to despatch steamers at advertised dates, whether full or not. They also built steamers of increasingly higher speed and class, and as trade developed they began to build steamers especially adapted for particular trades.

In the years immediately prior to and succeeding the opening of the Suez Canal in 1869, the output of steam tonnage was very great. The steam tonnage of the United Kingdom alone rose from 454,327 in 1860 to 1,112,934 in 1870, and 2,723,468 in 1880. The requirements of trade were outstripped and a period of severe competition among shipowners ensued, with the result that rates fell heavily. In the Eastern trade, Sir T. Sutherland informed us, the struggle was so keen that several of the Lines had to withdraw, and the remainder with a view to self-preservation "began to draw together so as to stave off disaster by coming to arrangements between themselves and with their customers." The problem which the Shipping Companies had before them was twofold: On the one hand they had to place themselves in a position to obtain rates which would be remunerative; on the other hand they had to conform to the new requirements of trade by giving regular sailings of high class vessels despatched at dates advertised beforehand, whether full or not full. At the same time the general increase in the cargo space of vessels enhanced the risk entailed in conforming to these requirements.

This "drawing together" of the lines resulted in the formation of the so-called "shipping conferences," and as one of the collaterals to them arose the pools. It is claimed by the shipowners and,

indeed, generally admitted that the provision of a regular service of steamships is of much importance to a merchant. His opportunities of shipping are increased and their occurrence at regular intervals and on fixed dates removes the necessity of storing his goods. Sir James Mackay of the British India Steamship Navigation Company correctly stated the situation in the following words when giving his testimony before the Royal Commission on Shipping Rings:

> If you keep on supplying goods to a country or to your customers with regularity, you increase the consumption. If you supply these goods fitfully and you do not supply the demand when the vacuum is there, then you never get it again in the same degree, whereas if you have a regular service of ships going out and constantly taking out full cargoes, in my opinion, you are increasing the demand in India and increasing the consumption in the country.

It can hardly be disputed that coöperation among lines, in that it gives regularity and frequency of sailings, stability of rates, and a more economic distribution of cost of service, is not only a desirable but an essential requirement in the trade. But the natural interrogation is, are these highly desirable essentails obtained only through pooling?

As many successful trades are conducted by the lines without the medium of a pool among those serving that particular trade, it is evident that the question cannot be answered by a simple yes or no. In an old established trade where the volume of business is large, the flow of traffic fairly stable, and the steamers of about the same size, type and frequency of service, it is possible for shipping companies to be conducted with justice to each other and to the shipping and traveling public without the medium of pools, provided they are bound by conference agreements. But exceptions must even be made to this rule as in the case of the north Atlantic passenger lines. The source of the flow of steerage traffic changes. In some years the movement may be from a district not contiguous to the terminal of a certain line, and, if the change should starve this line, the value of the pool comes into play in that it can be made to force to such disabled line its fair share of the traffic; otherwise a starved line will obtain its share by concessions, which are likely to result in a rate war, the logical conclusion of which is the elimination of the weak and a monopoly by the strong. One of the advantages accruing to the shipping and traveling public in the con-

siderations that bind several lines in one trade is the element of "live and let live;" the smaller lines are enabled to exist against the larger, thus giving added facilities to the public.

The advantages of pooling to shipowner, shipper and traveler in trades that are new or are in the course of upbuilding, or in trades that are already established but are served by steamers of varied type, speed and equipment, can be easily justified. Unless the steamers of all lines serving a particular trade are of the same character staple rates cannot be maintained, as shippers will not give their high-class merchandise to the inferior steamer, nor will the traveling public patronize the inferior steamer unless there is a concession. The less desirable steamers could obtain only the less desirable and less remunerative cargo. By means of pooling, the weak line is compensated for its failure to obtain a fair share of the more remunerative goods and by living alongside the strong line adds to the total of the shipping facilities. With the knowledge that each shares in the earnings of the other, the line which has the cargo least desirable to the needs of its type of ship will transfer part of such cargo to the line that can handle that character of cargo to advantage. The desideratum of a steamship manager is to send his ships to sea with a combination of cargo that exactly fills her when she is down to her plimsol marks. This ideal when achieved enables more economic operation, which should and generally does reflect itself in reasonable rates and added facilities to shippers.

While a conference can exist without a pool, a pool cannot exist without a conference. Sailings on certain days of the week or month are sometimes more desirable than other days of the week or month. In a conference without a pool all lines would endeavor to seek the most desirable days, causing a congestion of steamers at one period and a dearth at another to the disadvantage of the shipping and traveling public. A pool, however, offsets this scramble for position because the manager of the line with the disadvantageous sailing is complacent in his knowledge that he has an interest in the operations of his more fortunate brother. On some routes, there are often many ports which can be served en route. An owner attempting to serve them all would not only enormously increase his expenses but would also cause dissatisfaction to the receivers at the later ports of discharge because of the undue length of the voyage. The traffic must be handled not only in the most economi-

cal but also in the quickest manner possible. Therefore, the tendency would be for an individual line to avoid calling at the less important ports in order to obviate loss of time, extra steam and additional port charges. If, however, a line knows it will be compensated by its associate lines, it will serve the undesirable ports of call as frequently as the trade may reasonably require. Unless the different owners are permitted to equalize the results of these various voyages, each would have to resort to the system of visiting all ports or but a few ports. In either event, dissatisfaction would result in the one case from enhanced freight rates, which would be necessary in order to enable the owner to pay the expenses of a large number of ports or from failure to serve many of the ports at all. Furthermore, shippers are often obliged at stated intervals to make large shipments of a kind of material which would be quite unsuitable for a steamer, such as rails, on which the earnings would be much below those of succeeding steamers which would carry other portions of construction material covered by the same contract, the rates for which would be far more remunerative. Only a joint service, which could equalize the earnings under the whole contract, would carry the materials covered by these large contracts without charging freight rates so prohibitive as to deprive American manufacturers of the opportunity of securing the contracts in competition with foreign manufacturers.

Without coöperation in the form of pools, few steamship owners would dare take the risk of developing an entirely new trade single-handed. As a case in point—a few years ago there was no regular line of steamers operating between the west coast of Africa and the United States, although both England and Germany maintained frequent, regular and efficient services from their respective countries to that part of the world. What little business had been shipped between the United States and the west coast of Africa up to a few years ago was done by tramp ships or sailing vessels, with no fixed freight rates or sailing dates; certainly not the kind of service necessary to the development of a new trade. One of the prominent steamship lines in Germany determined to run a steamer regularly from New York touching at the principal ports on the west coast of Africa. A steamer making a voyage only once in four months would not be a service of sufficient frequency to build up the trade, yet the line in question did not feel justified in assuming more risk,

so it invited an English associate to join in the venture with another steamer, thus insuring a regular sailing every alternate month. As the ebb and flow of the traffic was uncertain and as chance might bring the one greater losses than the other (the word "loss" being used advisedly because in the initial stage only loss could be expected) the natural conclusion was a pool (partnership). Neither interest could well afford the risk of going alone and one alone could not give the exporters and importers of the United States the facilities for developing a new trade. The venture sufficiently stimulated the business ultimately to justify a joint service of a steamer each month instead of alternate months as originally inaugurated. Without coöperation and without that coöperation being bound by a pool, in order that neither line would be at a disadvantage, a trade between the United States and the west coast of Africa would have remained undeveloped.

The form and administration of pools differ according to trade requirements; in fact, the author of this article is familiar with the details of more pools than he has years in his life and yet no two can be recalled that were exactly alike, although some bore resemblance to each other. What is probably the simplest form is where a single article or a classification of articles is pooled without regard to the carryings of other cargo aboard the ship. Such form of pool carries with it an allowance for actual stevedoring and sometimes other expenses that are the same with each line, and this is known as the carrying charge. All monies received over and above the carrying charge are pooled and at stated subsequent periods divided in accord with the agreed percentages. An elaboration of this same simple pool is that the lines aim to divide both the volume of freight and the freight money in the same percentage for both. This generally is a fairer form because, if one line is behind in its share of the traffic, it does not hesitate to go into the market and secure its apportionment, even at times when rates are low, because the money above the carrying charge will ultimately be divided in the agreed percentages; therefore, the line temporarily behind in carryings has its interest in the high as well as the low freight.

The forms just mentioned are generally confined to the old established trades. In the long-voyage services it is more customary to pool the entire cargo, with the usual allowance for the carrying charge. This equalization of earnings is often extended to a form

that takes into consideration the cost of operating the steamer and these varying costs are brought to a common level, which is debited against the total earnings and the net profits are then apportioned in the agreed percentages among the lines party to the agreement.

This form of pool is very necessary in trades where there are several ports of call, part of which are served by one member of the conference and other ports by other members. The primary thought in this form of settlement is that some one line may at times be compelled to send its vessels to some small out-of-the-way port that has expensive port charges and where the cargo is worked slowly, thereby causing additional loss of time. Therefore, the steamers' extra costs and small earnings as regards such port must be compensated for; hence the necessity for a recognition of the steamers' loss of time, value and increased expenses in the final settlement.

Nearly all shipping conferences conduct their business through a central office, to the up-keep of which each member contributes, although in some cases where the details of the settlement are not voluminous, employes of the lines interested will act in turn as secretary and attend to the settlement of accounts. The settlement of a pool is generally in annual periods and nearly all of them run from year to year, with cancellation privileges that can be made effective on giving three or six months' advance notice. While a line can be and often is a member in pools in widely separated trades, yet rarely are any of these pools interrelated, and it is seldom if ever found that the membership of one pool is identical with the membership of another. The fact that a certain large line is a component part of a pool in one trade does not necessarily mean that its relations with its associate are on the same friendly footing in some other trade. In fact, cases could be cited where two members in a friendly group in one trade are actually at warfare with each other in some other trade. The appearance of the name of one large line in several groups and the name of another large line in some of the same groups would on its face indicate a connecting link that binds all regular lines in most of the trades in the world, although there is no basis of fact for this assumption, because there is rarely if ever any case where the groups themselves are in relation.

The economic necessity of pooling in the steamship business, as against the necessity for doing the same thing by the railways, which has been held in their case to be against public policy and in

some branches of it even made unlawful, can be best described by quoting from the testimony given by the author of this article before the Committee on the Merchant Marine and Fisheries in the investigation of shipping combinations under house resolution 587, held in Washington in the winter of 1913:

The interstate commerce law prohibits the pooling of railway freight, and yet the railways of this country, weak and strong alike, maintain the same tariffs and are able to exist side by side with each other, and your natural question will be, if this is possible with the railways, why is pooling necessary with the steamship lines? The Pennsylvania and the New York Central Railroads are the strong lines operating between Chicago and New York. The Erie Railroad is always thought of as one of the weaker roads, but the weaker road can live alongside of the strong road for the reason that on the line of all these roads between Chicago and New York are many prosperous towns which must ship their freight by the road on which it is located. So, after all, there is an enormous proportion of business of all of our railways that is non-competitive. I do not know whether it is true now or not, but some years ago the statement was made to me that in the neighborhood of 90 per cent of the traffic of the Pennsylvania Railroad originated on or was shipped to local noncompetitive stations on their line. The route between New York and Brazil or New York and the Caribbean district is not dotted with prosperous towns that originate business that is noncompetitive with the route of your competitor who is serving the same foreign countries, so, after all, all of the business is through business, and no shipper is going to patronize the weak line when he can throw his traffic to the strong line that will serve him more efficiently.

Arrangements that prevent discrimination and maintain the stability of rates is what shippers seek. It is difficult to maintain them unless some provision is made in order to take care of the disabilities of the weaker line. It does not necessarily require to be done by pools; it is not infrequently done by allowing the weaker line some differential rate, but the pool is the more effective instrument in overcoming the weaker line's disabilities and maintaining the desired stability in rates.

The benefits accruing to shipowners in a group of lines in conference bound by a pool can hardly be denied, but the critic will question the advantages that the public secures, as he will state that the bond between the lines tends towards monopoly, which means exorbitant rates and burdensome conditions. The United States Supreme Court decision in the Northern Securities case is often cited as a precedent as to the invalidity of the right of steamship companies to combine. The Supreme Court held the Northern Securities Company, a holding company formed to amalgamate two

of the large American transcontinental railways, invalid on the ground that, even though no evidence was shown that the amalgamation had caused the shipping and traveling public any disadvantages, but that on the contrary actual reductions had been made in freight rates and passenger fares, it had the power to monopolize and, therefore, should be dissolved. The decision, however, bears no parallel to overseas transportation, because combinations of carriers by sea are vulnerable and easily broken into without any extraordinary amount of capital invested. Steamship lines have not the power on which the Supreme Court ruled adversely in the case of the railways. A transcontinental railway costs hundreds of millions of dollars and years of labor to build, but the sea is an open field for every one and an effective competition can be built up in almost any trade with a capital far less than a hundredth part of the cost of construction of a transcontinental railway. If the critic's question still continues as to what is to prevent rates being put to exorbitant figures through the alleged power of these shipping agreements and pools, the answer is that there is nothing to prevent it except, if it were done, the partners in the trade would immediately subject themselves to competition from outsiders. The extent of possible competition can be made clear by quoting from the report submitted to the Committee on the Merchant Marine and Fisheries by the committee appointed by the representatives of steamship lines maintaining established services from New York to foreign countries during the hearings held by the committee in Washington in the winter of 1913. This report stated:

> The ocean trade, except for restricted coastwise trade in some countries, is free to all comers. According to the most recent reports of *Lloyd's Register of Shipping*, the oversea commerce of the world is conducted by over 25,000 steamers, having a gross tonnage of 43,954,000 tons, which are owned by approximately 4,200 different firms and companies. Of this great body of tonnage only about 1,555 steamers, owned by approximately 108 different companies, are engaged in regular line service in the oversea trades. The remainder constitutes the great mass of free tramp tonnage, operating entirely under the law of supply and demand, and regulating the ocean freight rates for everybody by the charges which they fix for the transportation of the great mass of the world's staple products. It is manifest that the relatively few regular lines, owning but a small proportion of the world's tonnage, could not, if they would, control the operations of the great number of tramp shipowners and the vast body of the tramp tonnage, or that any method of combination could be devised by which such owners of different nationalities, situated all over the world, could be brought into effective combination.

Any competent steamship man, given sufficient money to build a few steamers, which require only a small amount of money in comparison with the cost of building a transcontinental railway, can force down the rates of an extortionate group of shipowners, or an outside shipowner with ships already built can do the same if the field is made attractive by high rates. Everything on the sea is typical of the ocean itself; it seeks a common level. When one overseas trade is good, others are with rare exceptions just as good, and similarly when one is bad all are apt to be bad. That a particular trade is not attacked by outsiders is evidence sufficient that the steamship lines operating in that trade are conducting their operations in a fair and equitable manner. The only reason that some lines are in one trade and others in another is because the world is a large place and the steamship lines do not attempt to go into trades indiscriminately, when possibly their own on which they have worked for years offers just as good a field for development. Ships are not fixtures in any trade and are not constrained by any fixed line or route. They have no public aid, no franchises and, for the most part, no advantages of local trade between the termini of their voyages; they owe no duty to the state to maintain a service or to serve the public; their enterprises are of a private nature; they may come and go by whatever route or in whatever direction they please; their only incentive to engage in any particular trade is to develop the trade to such a point that it will yield a profit which will justify a regular and continuous service. It is conceded that the large shipper or a combination of large shippers always has the ability to break any combination of steamship lines by chartering tramp steamers, which can be done with the investment of a ridiculously small capital. The smaller shipper has, to a large extent, the same protection, in that there exists in the trade what are known as line or ship brokers who will, on their own account, charter steamers taking cargo from shippers, large and small, in competition with the regular lines, so that, through the large shipper's ability to charter steamers on his own account and the small shipper's ability to use the medium of the line broker, every shipper can rest his mind in peace in the knowledge that no combination of steamship lines can force him to pay extortionate rates. The tramp is such a factor in the business that the regular line rates rise and fall to a large extent on the tramp tonnage rates.

Some pools are so formed that they do not by any means eliminate competition, being constructed on the basis that unless a line carries its percentage it is penalized in a reduced percentage, which causes each line party thereto to improve its facilities and service so as to cater better to the whims and demands of the shipping and traveling public. Not infrequently, as in the case of the north Atlantic steerage traffic, the arrangement is based on a minimum rate, the income from which is pooled, and any increase that any line obtains over the minimum is for the account of that line solely. No line can obtain a premium without offering improved facilities, and it has been competition not monopoly that has resulted in the fast and palatial type of steamer now operated between the United States and Europe. Pools, therefore, do not necessarily prohibit competition, either internally or externally. Any conference lines which gain power by their coöperation and abuse that power can easily be and are soon disciplined; not by the courts of law, for that is unnecessary, but by actual competition of others in the business who are quick to see and avail themselves of an opportunity. Ships' ability to move from one trade to another, and the freedom of action and movement by steamers on the high seas are the shipping and traveling public's insurance against unfair treatment.